

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MORAVIAN ASSOCIATES, L.P., et al,	:	
	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	No. 06-cv-2165
	:	
THE HENDERSON CORPORATION,	:	
	:	
Defendant.	:	

MEMORANDUM AND ORDER

Joyner, J.

October 6, 2008

FACTUAL BACKGROUND

Before this Court is Defendant Henderson Corporation's Motion for Attorney's Fees and Expenses (Doc. No. 48), and the Response in Opposition (Doc. No. 52) filed by Plaintiffs, Moravian Associates, L.P., et al.

A non-jury trial was held in this case on February 11, 12, and 13, 2008, and this Court issued an opinion on August 12, 2008. Moravian Assocs., L.P. v. Henderson Corp., 2008 U.S. Dist. LEXIS 62260, 2008 WL 3562468 (E.D. Pa. Aug. 12, 2008). This Court found that under the Pennsylvania Contractors and Subcontractors Payment Act (CASPA), 73 Pa. Const. Stat. § 512(b), Defendant, the Henderson Corporation, was the "substantially prevailing party," and, as such, was entitled to attorneys fees. Id. at *40. At the time of this decision, the Court did not have

sufficient information to make a finding as to attorney's fees and requested post-trial motions from the parties on this matter Id. at *41-42. We will now determine reasonable attorneys fees and costs.

DISCUSSION

As articulated by this Court in Enright v. Springfield Sch. Dist., 2008 U.S. Dist. LEXIS 20051, *5-6, 2008 WL 696845, *1-2 (E.D. Pa. Mar. 13, 2008),

A prevailing party . . . is not automatically entitled to compensation for all the time its attorneys spent working the case. Interfaith Community Organization v. Honeywell, 426 F.3d 694, 711 (3d Cir. 2005). The party seeking attorneys' fees has the burden to prove that its request is reasonable; to meet this burden, that party must submit evidence to support the hours and billing rates it claims. Potence v. Hazleton Area School District, 357 F.3d 366, 374 (3d cir. 2004), citing Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1990). A reasonable hourly rate multiplied by a reasonable number of hours expended -- the lodestar -- is the presumptively reasonable fee. Planned Parenthood v. Attorney General of State of New Jersey, 297 F.3d 253, 265, f.5 (3d Cir. 2002), citing Hensley v. Eckerhart, 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) and Loughner v. University of Pittsburgh, 260 F.3d 173, 177 (3d Cir. 1995). [. . .]

It should be noted that a court may not reduce an award sua sponte; rather it can only do so in response to specific objections made by the opposing party. Once such objections have been registered, it is then incumbent upon the court awarding fees to decide whether the hours set out were reasonably expended for each of the particular purposes described and then exclude those that are excessive, redundant or otherwise unnecessary.

Interfaith Community, supra., citing Public Interest Research Group of New Jersey, Inc. v. Windall, 51 F.3d 1179, 1188 (3d Cir.1995) and Bell v. United Princeton Properties, Inc., 884 F.2d 713, 719 (3d Cir. 1989). Thus, "it is necessary that the Court go line by line through the billing records supporting the fee request." Evans v. Port Authority of New York and New Jersey, 273 F.3d 346, 362 (3d Cir. 2001).

In its motion and supporting memorandum, Henderson has provided the names, qualifications and hourly rates of each attorney that has worked on this project, as well as a detailed "Time and Expense Details" report ("Report") that provides work summaries over the past two years. Def. Exh. A. Hence, the defense has provided evidence to support its claim that the attorneys are entitled to \$323,198.50 in fees and \$11,015.55 in costs. Plaintiff, in opposition, raises four objections to challenge these reports and this Court will address only these objections. In regards to these challenges, it is noted that, "the burden remains on the party requesting the fee to prove its reasonableness, and the court has 'a positive and affirmative function in the fee fixing process, not merely a passive role.' Interfaith Community Organization, 426 F.3d at 713 (citing Loughner, 260 F.3d at 178). While Moravian does not challenge the reasonableness of the hourly rates charged by Henderson's attorneys, it does object to a number of entries as "excessive, redundant or otherwise unnecessary." Interfaith, 426 F.3d at 1188.

I. Attorneys fees related to Henderson's Confession of Judgment and subsequent state court matters

Moravian argues that, as a part of the Confession of Judgment submitted on March 26, 2007, Henderson's attorneys were compensated for their time and attention in that matter, totaling \$167,900.00, or 5% of the \$3,358,000.00 principle indebtedness, as a part of the judgment. Pl. Exh. A ("Complaint for Confession of Judgment"). However, Moravian notes that numerous entries in the Report refer to work done on the Confession of Judgment. See Pl. Exh. B ("Billing Entries for Confession of Judgment"). Our review of these entries does find that eleven (11) entries concern "work on confession of judgment package," "prepare confession for filing," and the like.¹ This

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Date	Hrs	Attorney	Rate	Description	Deduction
5/16/06	.4	Thomas N. Sweeney	\$225	Phone conference with MAK and AFB re: confession of judgment and removal of state action to federal court.	50%: .2 hours; \$45.00
6/2/06	3	Thomas N. Sweeney	\$225	Work on confession of judgement package, namely complaint and affidavits in support thereof; continue analysis of documents supporting Moravian defendant's claim of sufficient collateral to protect Henderson's interests	50%: 1.5 hours; \$337.50
6/4/06	1	Thomas N. Sweeney	\$225	Work on confession of judgment package	100%: 1 hour; \$225.00
3/20/07	1.2	Thomas N. Sweeney	\$245	Onufrak correspondence; answer to complaint; confession of judgment	50%: .6 hours; \$147.00

work would fall under the attorneys fees awarded in the confession of judgment and would be duplicative if awarded in this matter. Clearly, however, deductions for these activities are made complicated in light of the fact that multiple tasks were billed within the same time entry. Accordingly, we will assume that each task listed took an equal amount of time and deduct an appropriate fraction each entry concerning the

3/20/07	2.5	Thomas N. Sweeney	\$245	Work of complaint against Moravian defendants; Prepare confession package; conferences with GEP, MAK and JL re: same	50%: 1.25 hours; \$306.25
3/23/07	.8	George E. Pallas	\$290	Phone conference with Joe Britton, counsel for Olde Town re: status; Conference with MAK re:12(b)(6) motion and status of confession of judgment	50%: .4 hours; \$116.00
3/23/07	4.5	Thomas N. Sweeney	\$245	Work on confession of judgment package; revisions to Motion to Dismiss	50%: 2.25 hours; \$551.25
3/26/07	3.2	Thomas N. Sweeney	\$245	Revisions to Motion to Dismiss; incorporate MAK revisions; file same; prepare confession for filing	25%: .8 hours; \$196.00
3/23/07	2.6	Marian A. Kornilowicz	\$300	Review and revise confession package; Multiple phone cf. counsel for Citizens, Onufrak and clients	50%: 1.3 hours; \$390.00
3/26/07	.5	George E. Pallas	\$290	Meeting with client re: Citizen's Bank meeting; Conference with MAK re: confession of judgment	50%: .25 hours; \$72.50
3/29/07	.8	Marian A. Kornilowicz	\$300	Phone cf. with adversary and client re: resolution; Prepare corr. re: confession	50%: .4 hours; \$120.00
				TOTAL:	9.95 hours; \$2,506.50

confession of judgment. Hence, the award will be reduced by a total of 9.95 hours, totaling \$2,506.50.

Similarly, the remaining entries challenged by Moravian concerning the confession of judgment appear to be related to Moravian's petition to Open Confession of Judgment.² Pl. Exh. B.

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Date	Hrs	Attorney	Rate	Description	Deduction
5/4/07	1.4	Marian A. Kornilowicz	\$300	Review petition to open confessed judgment; Multiple phone cf. with adversary and court re: stipulations; Review and prepare same	50%: .7 hours; \$210.00
5/10/07	2.2	Marian A. Kornilowicz	\$300	Multiple phone cf. adversary and client re: stipulation, etc; Prepare response to petition to open	50%: 1.1 hours; \$330.00
5/16/07	2	Alexander F. Barth	\$205	Draft Memorandum of Law in response to Motion to Open Confession Judgment	100%: 2 hours; \$410.00
5/16/07	5.2	Marian A. Kornilowicz	\$300	Phone cf. adversary and Court re: status and scheduling; Prepare response to petition; Review file, etc.	50%: 2.6 hours; \$780.00
5/17/07	3.8	Marian A. Kornilowiscs	\$300	Prepare, revise and edit response to petition supporting memorandum	100%: 3.8 hours; \$1140.00
5/17/07	1.5	Alexander F. Barth	\$205	Review, revise and file response to motion to open confessed judgment	100%: 1.5 hours; \$307.50

While we recognize that Henderson's defense to Moravian's petition to open the confessed judgment was a part of Henderson's overall defense under the Settlement Agreement, the work done in opposition to Moravian's petition did not contribute towards the outcome in the present district court action and cannot be compensated as such. The litigation surrounding the Motion to Open were fully litigated in state court and were distinct to the litigation in this Court. Again, as these tasks were billed in the same entry as other reimbursable tasks, they will be reduced by the relevant portion of that entry (assuming that each tasks took an equal amount of time). Thus, the petition will be

7/24/07	1	Lance S. Forbes	\$205	Legal research in re: Defendant's appeal frm denial of petition to open confession of judgment; emails to and from Stuart Lurie in re: production of Citizen's Bank documents; Receipt and review of Defendant's Notice of Appeal from order denying Petition to Open Confession of Judgment	80%: .8 hours; \$164.00
12/4/07	1.7	Lance S. Forbes	\$205	Letter from court re: mediation on petition to open confession on judgment appal; preparation of mediation position paper; preparation of cross-examination outline of Jonathan Sutton.	50%: .9 hours; \$184.50
12/7/07	.2	Lance S. Forbes	\$205	Emails to and from Mary Dixon re: mediation in re: denial of petition to open confession of judgment	100%: .2 hours; \$41.00
				TOTAL	13.6 hours; \$3,567.00

reduced by a total of 13.6 hours, totaling \$3,567.00 dollars.

II. Sub-contractor communications regarding threatened law suits

Moravian disputes three (3) entries pertaining to lawsuits threatened by subcontractors, not connected to this litigation.³ This Court agrees that there is no way to determine if the entries were made in furtherance of the resolution of the case at hand or if they concerned separate collateral matters. Hence, we will strike 3.5 hours of time from the calculation and deduct \$828.00 from the award.

III. Vague entry descriptions

Defendants argue that many of Henderson's attorneys entries are too vague to provide a reasonable description of the work

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Date	Hrs	Attorney	Rate	Description	Deduction
2/21/07	1.2	George E. Pallas	\$290	Phone Conference with Mile Onufrak re: meeting; Conference with MAK re: case strategy; Phone Conference with Berlin Steel re: payment	1.2 hours; \$348.00
5/17/07	2.2	Lance S. Forbes	\$205	Review of correspondence to produce all correspondence dealing with the threatened lawsuits by subcontractors	2.2 hours; \$451.00
12/13/07	.1	George E. Pallas	\$290	Phone conference with elevator subcontractor re: payment	.1 hours; \$29.00
				TOTAL	3.5 hours; \$828.00

done. See Pl. Exh. C ("Vague and Poorly Described Billing Entries"). Certainly, a "fee petition is required to be specific enough to allow the . . . court to determine if the hours claimed are unreasonable for the work performed." Tenaflly Eruv Ass'n v. Borough of Tenaflly, 195 Fed. Appx. 93, 99-100 (3d Cir. N.J. 2006) (quoting Washington v. Phila. County Ct. of Common Pleas, 89 F.3d 1031, 1037 (3d Cir. 1996) (internal quotation marks omitted)). Hence, it

should include some fairly definite information as to the hours devoted to various general activities, e.g., pretrial discovery, settlement negotiations, . . . [but] it is not necessary to know the exact number of minutes spent nor the precise activity to which each hour was devoted nor the specific attainments of each attorney.

Washington, 89 F.3d at 1037-38 (internal quotation marks omitted). Though some entries lack complete clarity, in most entries, Henderson's attorneys have adequately documented their time in line with this standard. Pl. Exh. C ("Review and revise reply," "Multiple interoffice cf. re Citizens," "Trial preparation/organization; review of Judge Joyner's trial procedures"); See also Loesch v. City of Philadelphia, 2008 U.S. Dist. LEXIS 48757, *17, 2008 WL 2557429, *6 (E.D. Pa. June 19, 2008) ("We find that the computer-generated time sheets provide a sufficient description of the general nature of each activity performed, and it would not be practicable to describe every iota of every discrete time period in greater detail.");

Tomasso v. Boeing Co., 2007 U.S. Dist. LEXIS 70001, *13, 2007 WL 2753171, *5 (E.D. Pa. Sept. 21, 2007) (noting that “[i]t was not practicable to describe each document that was reviewed by counsel in each time entry.”); Grove v. City of York, 2007 U.S. Dist. LEXIS 20255, *10, 2007 WL 906439, *3 (M.D. Pa. Mar. 22, 2007) (“While the court agrees with the City that ‘prepared for trial’ and ‘continued preparation for trial’ are not highly detailed, the court concludes that the description is within the bounds articulated in Lindy Bros.”) (citing Lindy Bros. Builders, Inc. v. Am. Radiator & Standard Sanitary Corp., 487 F.2d 161, 167 (3d Cir. 1973)). However, the following entries are not specific enough for the Court to determine if they were reasonable:

(1) Moravian takes issues with six separate entries by partner, Lonny S. Cades, which are described only as “Review of Documents.” This Court agrees that it is would be unreasonable to award those fees, as we are unable to ascertain what Mr. Cades, a partner in the firm, was reviewing and if the documents in any way related to the matters at hand. The fact that Mr. Cades was not a core part of the team working on the case and, ultimately, seemed only to either review documents or hold conferences, adds to our inability to determine if these entries

are relevant to the litigation. Hence, the 18.4 hours⁴ spent solely on document review will be subtracted from the overall reward, resulting in a deduction of 18.4 hours, totaling \$5,336.00 (18.4 hours at a rate of \$290.00).

IV. Excessive billing

Moravian points to general overstaffing on the part of Henderson's attorneys, claiming that fifteen attorneys over two years should be considered excessive or redundant. While this Court finds that this number of attorneys is startling, it also notes that a myriad of issues, involving mortgages, construction agreements and real estate, were at issue. We also note that it appears that the majority of the work was done by four attorneys, Marian A. Kornilowicz, George E. Pallas, Lance S. Forbes and

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Date	Hrs	Attorney	Rate	Description	Deductions
2/2/07	3.5	Lonny S. Cades	\$290	Review of documents	3.5 hours; \$1,015.00
2/3/07	2.5	Lonny S. Cades	\$290	Review of documents	2.5 hours; \$725.00
2/4/07	4.6	Lonny S. Cades	\$290	Review of documents	4.6 hours; \$1,334.00
2/11/07	4.8	Lonny S. Cades	\$290	Review of documents	4.8 hours; \$1392.00
2/27/07	0.5	Lonny S. Cades	\$290	Review of documents	.5 hours; \$145.00
2/28/07	2.5	Lonny S. Cades	\$290	Review of documents	2.5 hours; \$725.00
				TOTAL	18.4 hours; \$5,336.00

Ashling A. Lyons. Additionally, Moravian has stated only "it appears that no less than 15 attorneys worked on the matter in the last two years or so. This is too inefficient under any circumstances." Pl. Memo. Oppos. Fee. Pet. However, the Third Circuit has held in similar matters,

[W]e emphasize that the adverse party's submissions cannot merely allege in general terms that the time spent was excessive. In order to be sufficient, the briefs or answers challenging the fee request must be clear in two respects. First, they must generally identify the type of work being challenged, and second, they must specifically state the adverse party's grounds for contending that the hours claimed in that area are unreasonable.

Bell v. United Princeton Properties, Inc., 884 F.2d 713, 720-21 (3d Cir. 1989). As it is unclear what type of work is being challenged and what the grounds are for claiming that is unreasonable, this Court will not deduct from the overall award on this account.

Finally, Moravian asserts that Henderson's attorneys excessively billed 64.7 hours to prepare for the cross-examination of Jonathon Sutton, a lead developer and witness in the matter. After reviewing each entry and finding, indeed, that two attorneys, an associate and a partner, billed 64.7 hours, totaling \$15,047.00, exclusively on this task, we agree that this was excessive to prepare for one cross-examination. See R.C. v. Bordentown Regional Sch. Dist. Bd of Educ., 2006 U.S.

Dist. LEXIS 72720, 2006 WL 2828418, at *3 (D.N.J. Sept. 29, 2006) (hours spent in preparation for the hearing were considered relative to the actual length of the hearing); Apple Corps. Ltd. v. Int'l Collectors Soc., 25 F. Supp. 2d 480 (D.N.J. 1998) (finding it "excessive" for an attorney to spend three times the number of hours preparing as trying the case). This number is even more staggering in light of the time billed separately by Mr. Forbes as general "trial preparation." This Court finds that a total of 12 hours would be adequate to prepare for one cross examination in this case. Accordingly, Mr. Forbes's hours will be reduced from 49.2 hours to 10 hours and Mr. Pallas's hours from 15.5 hours to 2 hours, resulting in a total deduction of \$12,319.00.⁵

CONCLUSION

After fully reviewing the Henderson's attorneys submissions and Moravian's challenges to these entries, we will deduct the following from the total lodestar calculation:

Description	Time deducted	Amount deducted
State court-related entries	23.55 hours (involving multiple attorneys)	\$6,073.50

⁵This rate is based on an hourly rate for Mr. Forbes's of \$207.50, the average of his hourly rates between 2007 to 2008, \$205.00 and \$210.00 respectively. A deduction of 39.2 hours for Mr. Forbes's work, therefore, results in a deduction of \$8,134.00. Mr. Pallas's total deduction is \$4,185.00 based on a deduction of 13.5 hours at an hourly rate of \$310.00.

Sub-contractor claims	3.5 hours (involving George E. Pallas at \$290.00 and Lance S. Forbes at \$205.00)	\$828.00
Vague entries	18.4 hours (involving Lonny S. Cades at \$290.00)	\$5,336.00
Excessive time	52.7 hours (involving Lance S. Forbes at \$207.50 and George E. Pallas at \$310.00)	\$12,319.00
TOTAL	98.15 hours	\$24,556.50

Hence, \$24,556.50 will be deducted from Henderson's initial demand of \$323,198.50 for reasonable attorney's fees. Henderson is therefore entitled to a total sum of \$298,642.00 in reasonable attorneys fees, as well as \$11,015.55 in costs associated with their defense of this federal action.

An Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MORAVIAN ASSOCIATES, L.P., et al,	:	
	:	
Plaintiffs,	:	CIVIL ACTION
	:	
vs.	:	No. 06-cv-2165
	:	
THE HENDERSON COMPANY,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 6TH day of October, 2008, upon consideration of Defendant's Motion for Attorneys Fees and Expenses, and responses thereto, for reasons set forth in the attached Memorandum, it is hereby ORDERED that pursuant to 73 Pa. Const. Stat. § 512(b) the Motion is GRANTED and Plaintiffs, Moravian Assoc., L.P., et al, are DIRECTED to pay the sum of \$298,642.00 in attorneys fees and \$11,015.55 in expenses to Defendants, the Henderson Corporation, and their counsel within thirty (30) days of the entry of this order.

BY THE COURT:

S/J. CURTIS JOYNER
J. CURTIS JOYNER, J.

